

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of Jason Bye, individually
and d/b/a Progressive Exteriors, Inc.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Kathleen D. Sheehy on May 26, 2005, at 1:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce (the Department). There was no appearance by or on behalf of the Respondent, Jason Bye, doing business as Progressive Exteriors, Inc., 11812 – 48th Street NE, Eyota, Minnesota 55934. The OAH record closed at the conclusion of the prehearing conference.

NOTICE

This Report is a recommendation, not a final decision. The Deputy Commissioner of Commerce will make the final decision after a review of the record. The Deputy Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Deputy Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Deputy Commissioner. Parties should contact Kevin M. Murphy, Deputy Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, telephone (651) 296-9411, to ascertain the procedure for filing exceptions or presenting argument to the Deputy Commissioner.

If the Deputy Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Deputy Commissioner, or upon the expiration of the deadline for doing so. The Deputy Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

The issues presented in this case are whether discipline should be retroactively imposed or civil penalties should be assessed because:

(1) the Respondent acted and held himself out as a residential building contractor, residential remodeler, and/or roofer and engaged in unlicensed activities in violation of Minn. Stat. §§ 326.84, subds. 1a & 1b; 326.842; and 326.91, subds. 1(5) & 4;

(2) the Respondent has been shown to be incompetent, untrustworthy, or financially irresponsible in failing to complete work specified in his contracts and in performing negligently or in breach of contract, in violation of Minn. Stat. § 326.91, subds. 1(2), 1(6) & 4;

(3) the Respondent has engaged in a fraudulent, deceptive, or dishonest practice in failing to obtain a local building permit, in violation of Minn. Stat. § 326.91, subds. 1(2) & 4, and Minn. R. 2891.0040, subp. 1(H);

(4) the Respondent engaged in a fraudulent, deceptive, or dishonest practice in representing to customers and placing advertisements stating that he was a licensed residential building contractor, in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1B;

(5) the Respondent engaged in a fraudulent, deceptive, or dishonest practice in contracting and offering to contract after his license was terminated, in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1F; and

(6) the Respondent has failed to respond to the Department's request for information and failed to appear before a representative of the Department when so ordered, in violation of Minn. Stat. § 45.027, subd. 1a.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On April 1, 2005, the Commissioner of Commerce issued a Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges (Notice and Order for Hearing). On April 11, 2005, the Department served the Notice and Order for Hearing on the Respondent by first-class mail addressed to Jason Bye, Progressive Exteriors, Inc., 11812 – 48th Street NE, Eyota, MN 55934.

2. The Prehearing Conference was scheduled to take place at 1:30 p.m. on May 26, 2005, at the Office of Administrative Hearings.

3. The Notice and Order for Hearing contained the following language:

Respondent's failure to appear at the contested case hearing and/or prehearing conference may result in a finding that the Respondent is in default, that

the Department of Commerce's allegations contained in the Statement of Charges may be accepted as true, and its proposed action may be upheld.^[1]

6. The Respondent failed to appear for the prehearing conference on May 26, 2005. He did not contact the Department or the Administrative Law Judge to request a continuance. Because the Respondent failed to appear at the prehearing conference in this matter, he is in default.

8. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing at paragraphs 1 through 13 are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91.

2. The Notice and Order for Hearing issued by the Department was proper and the Department has fulfilled all relevant procedural requirements of law and rule.

3. The Respondent is in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing are hereby taken as true.

4. By holding himself out as a residential building contractor, residential remodeler, and/or roofer; by entering into a contract with the Wingerts to perform residential remodeling; and by placing advertisements for his services stating that he is a licensed residential building contractor, the Respondent engaged in unlicensed residential building contractor or remodeler activities in violation of Minn. Stat. §§ 326.84, subds. 1a & 1b; 326.842; and 326.91, subds. 1(5) & 4.

5. By failing to complete work specified in his contracts and in performing negligently or in breach of contract, the Respondent has been shown to be incompetent, untrustworthy, or financially irresponsible, in violation of Minn. Stat. § 326.91, subds. 1(2), 1(6) & 4.

6. By failing to obtain a local building permit for work on the Hollister home, the Respondent engaged in a fraudulent, deceptive, or dishonest practice, in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1H.

7. By representing to customers that he is a licensed residential building contractor and by placing advertisements stating that he was a licensed residential building contractor, the Respondent engaged in a fraudulent, deceptive, or dishonest

practice, in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1B.

8. By contracting and offering to contract after his license was terminated, the Respondent engaged in a fraudulent, deceptive, or dishonest practice, in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1F.

9. By failing to respond to the Department's request for information and by failing to appear before a representative of the Department when so ordered, the Respondent violated Minn. Stat. § 45.027, subd. 1a.

10. The imposition of discipline and/or civil penalties against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce take disciplinary action and/or impose appropriate civil penalties against the Respondent.

Dated: May 27, 2005

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

^[1] Notice and Order for Hearing at 6.